HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 2853 of 2007

Petitioners	1.	M.A.Gaffar, S/o. Abdul Sattar, aged about 72 years, R/o. Palace Road, Raigarh Tehsil and District Raigarh (C.G.)
	2.	Mohammed Muneer, S/o. Abdul Sattar, aged about 45 years, R/o. Handi Chowk, Raigarh, Tehsil and District Ragiarh (C.G.).
	Versus-	
Respondents	1.	State of Chhattisgarh, through Secretary, Home Department, Govt. of C.G., DKS Bhawan, Mantralaya, Raipur (C.G.)
	2.	Inspector General of Police, Bilaspur Division, Bilaspur (C.G.)
	3.	Superintendent of Police, Raigarh (C.G.)
	4.	Chief Executive Officer, Chhattisgarh State Waqf Board, Raipur (C.G.)
	5.	Officer-in-charge, City Kotwali, Raigarh, District Raigarh (C.G.)
	6.	District Magistrate, Raigarh (C.G.)
	7.	Mohammed Abrar, S/o. Shri Iqbal Ahmed, aged about 45 years, R/o. Gaushalapara, Raigarh Tehsil and District Raigarh (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri Uttam Pandey, Advocate with Shri Vipin Punjabi, Advocate for the petitioner.

Shri Sumesh Bajaj, Govt. Advocate for the respondents No. 1 to 6.

Shri Dipanshu Kabra, Superintendent of Police, Raigarh is present in person.

ORDER

(Passed on this 5th day of July, 2007)

1. The petitioner has filed this petition under Article 226 of the Constitution of India seeking following reliefs:-

"7.1 That the Hon'ble Court be pleased to issue a writ in the nature of mandamus to respondents 2, 3 and 5 directing thereby that the imminent danger be removed within a

reasonable time and assured this Hon'ble Court that the impediment in connection with the burial of dead body has been completely expelled.

7.2 That the Hon'ble Court be further pleased to that the respondent No.6 be directed to take action under the provisions of Section 147 of the Code of Criminal Procedure and insure that he has taken positive action in settling the dispute concerning the right of use of graveyard (Kabristan).

7.3 That the Hon'ble Court be further pleased to that the respondents be directed to investigate the matter as is contained vide Annexure A/1 to A/3 and prosecute the respondent No.7 under the National Security Act against his illegal and arbitrary behaviour.

7.4 That such other reliefs which the Hon'ble Court deems fit in the circumstances of the case, be also granted to the petitioners."

2. Learned counsel appearing for the petitioners submits that the petitioners and the members of Devband Muslim community are being restrained from using the graveyard in question for burial purpose of the dead body. Under the Muslim law, if a property is a public property, no one can prevent members of the Muslim community to use the graveyard for burial of dead bodies.

3. The dispute with regard to the nature of the property involves disputed question of facts which cannot be decided by this Court under writ jurisdiction. The issue with regard to the nature of the property has to be considered and decided in other jurisdiction i.e. civil jurisdiction.

4. The respondents have filed their return dated 29.6.2007. Shri Dipanshu Kabra, Superintendent of Police, Raigarh, present in the Court, states that a case under Section 147 of the Criminal Procedure Code has been registered on 8.6.2007 and the same has

been referred to the Court of City Magistrate, Raigarh on 13.6.2007, wherein notice has been issued to the concerned parties. The Superintendent of Police, Raigarh submits that he will ensure that there is proper law and order in the city.

5. With regard to the prayer that the applications have been moved under the provisions of the National Security Act and no steps have been taken, the answering respondents are directed to consider and examine the complaint dated 26.2.2007, in accordance with law, on its own merits, within a reasonable period.

6. In view of the foregoing observations, this petition stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

Thakur